

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5926 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

SHAKUNTALA CHANDRAPRASAD DESAI

Versus

ADDL URBAN LAND TRIBUNAL & EX-OFFICIO SECRETARY TO GOVT

Appearance:

Shri Percy Kavina, Advocate, for Shri M.J. Thakore,
Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for
the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 18/04/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No.2 herein) on 14th February 1983 under section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Additional Urban Land Tribunal at Ahmedabad (respondent No.1 herein) on 29th July 1987 in Appeal No.Ahmedabad-101 of 1983 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 1335.20 square metres.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed a declaration in the prescribed form under section 6 (1) of the Act with respect to her holding within the urban agglomeration of Ahmedabad. It was duly processed by respondent No.2. After observing necessary formalities under section 8 of the Act, by his order passed on 14th February 1983 under sub-section (4) thereof, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 1335.20 square metres. Its copy is at Annexure-B to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.1 under section 33 of the Act. It came to be registered as Appeal No.Ahmedabad-101 of 1983. By the order passed on 29th July 1987 in the aforesaid appeal, respondent No.1 dismissed it. Its copy is at Annexure-A to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-A to this petition.

3. The grievance voiced by learned Advocate Shri Kavina for the petitioner is to the effect that the constructed property in the holding of the petitioner has not been excluded from her holding contrary to the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 Supreme Court at page 1567. It has been urged that the property bearing survey No.273/1 situated at Paldi admeasuring 1291.81 square metres has two separate buildings containing dwelling units and each building would be entitled to separate land appurtenant thereto. If that is taken into consideration, runs the submission urged before me by learned Advocate Shri Kavina for the petitioner, the excess vacant land in the holding of the petitioner would be within 10% of the ceiling limit

prescribed for the urban agglomeration of Ahmedabad and it need not be declared surplus for the purposes of the Act. As against this, learned Assistant Government Pleader Shri Sompura for the respondents has urged that, as transpiring from the appellate order at Annexure-A to this petition, there is only one building housing a residential unit and the entire area of the land cannot be excluded from the petitioner's holding even by applying the binding ruling of the Supreme Court in the case of MEERA GUPTA (supra).

4. It clearly transpires from the order of respondent No.2 at Annexure-B to this petition that there was one house property admeasuring 116.25 square metres and there was one outhouse admeasuring 33.75 square metres in the aforesaid parcel of land. It thus becomes clear that there were two separate buildings constructed in the land. In fact, the appellate order also has recorded this finding. The only difficulty is that the appellate authority has considered the other building not to be a dwelling unit.

5. It may be noted that the petitioner caused a reply to be given to the draft statement served to her under section 8 of the Act. Its copy is at Annexure-D to this petition. It clearly transpires therefrom that the other building is also used for residence. Even the appellate authority has also styled it as an outhouse. The dictionary meaning of the word "outhouse" would be a small dwelling unit adjoining the main house. In that view of the matter, the appellate authority was not justified in coming to the conclusion that there were no two dwelling units in the land in question.

6. In its ruling in the case of JAYAGANRI GOKALDAS, BHAVNAGAR v. STATE OF GUJARAT reported in 1994 (1) GUJARAT CURRENT DECISION at page 871, this court has held that each building housing a dwelling unit or dwelling units would be entitled to separate land appurtenant for the purposes of the Act. Learned Advocate Shri Kavina has also invited my attention to one Central Government Circular of 4th January 1977 appearing at page 23 in the Compendium of the Urban Land (Ceiling & Regulation) Act, 1976 (No.33 of 1976) and Guidelines issued by the Ministry of Works and Housing, Government of India. It has inter alia been provided therein that an outhouse consisting of a separate building would also be entitled to a separate land appurtenant to together with the additional land appurtenant to for the purposes of section 2 (g) of the Act. It cannot be gainsaid that the aforesaid Circular would be in the nature of a direction

issued by the Central Government to the State Government within the meaning of section 36 of the Act. It cannot be gainsaid that such directions have to be given effect to for carrying into execution in the State any of the provisions of the Act in question. In that view of the matter, the authorities below could not have ignored those directions and could not have refused to give a separate land appurtenant to the second dwelling unit known as the outhouse.

7. It becomes clear from the order of respondent No.2 that the construction of the main building was 116.25 square metres and it was entitled to 174 square metres as land appurtenant to on account of building regulations and 500 square metres as additional land appurtenant thereto. It has also been mentioned therein that the construction of the outhouse was 33.75 square metres and it was entitled to 50.75 square metres as land appurtenant to on account of building regulations. No additional land appurtenant thereto has been considered by respondent No.2.

8. In view of my aforesaid discussion, the outhouse also would be entitled to separate additional land appurtenant thereto to the tune of 500 square metres. The total area to be excluded from the holding of the petitioner would therefore come to 1374.75 square metres. However, since the area of the land in question is 1291.81 square metres, that area will have to be deducted from the petitioner's holding in view of the binding ruling of the Supreme Court in the case of MEERA GUPTA (supra). If that area is excluded, the holding of the petitioner would be 1043.48 square metres. The petitioner would be entitled to hold 1000 square metres as the ceiling limit prescribed for the urban agglomeration of Ahmedabad. Her holding would be in excess of the ceiling limit by 43.48 square metres. This is not required to be declared surplus as it is within 10% of the prescribed ceiling limit in view of the Government Circulars in that regard.

9. Since I have taken this view, I have not thought it fit to deal with the other submissions urged before me by learned Advocate Shri Kavina for the petitioner.

10. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-B to this petition as affirmed in appeal by the appellate order at Annexure-A to this petition is quashed and set aside.

11. In the result, this petition is accepted. The

order passed by the Competent Authority at Ahmedabad on 14th February 1987 at Annexure-B to this petition as affirmed in appeal by the appellate order passed by the Additional Urban Land Tribunal at Ahmedabad on 29th July 1987 in Appeal No.Ahmedabad-101 of 1983 at Annexure-A to this petition is quashed and set aside. It is hereby declared that the holding of the petitioner does not deserve to be declared surplus. Rule is accordingly made absolute with no order as to costs.

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